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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,383	12/21/2001	Tom K. Wentzel	KCC 4843 (KC# 15,400)	5427

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/032,383

Applicant(s)

WENTZEL ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-22, 24-33, 35, 37-56, 58 and 61-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5, 7-22, 24-33, 35, 37-56, 58 and 61-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 17, 2004 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 – 5, 7 – 12, 14, 16 – 18, 20 – 22, 24, 26 – 27, 29, 31 – 33, 35, 37 – 42, 44 – 46, 49, 51 – 56, 58 and 61 – 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Keuhn, Jr. et al. (US 5,374,262).

As to claims 2 – 3, 32 – 33 and 37 – 38, Keuhn, Jr. et al. (hereinafter “Keuhn”) discloses the absorbent article as an incontinence product and a diaper as set forth in col. 1, lines 13 – 18.

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Regarding claims 4 and 5, Keuhn discloses the fastener (40) as a generally rectangular shape as set forth in figures 1 and 6 – 7.

Regarding claims 7, 35 and 40, Keuhn discloses the active fastening material as a plurality of hooks (73, 75) as set forth in figure 7.

Regarding claims 8 – 10, Keuhn discloses an article with the claimed row configuration and density as set forth in col. 12, lines 34 – 45.

As to claims 11, 26 and 44 Keuhn discloses the fastener comprising an anchor end (area generally designated by reference character 47) and a user end (area generally designated by reference character 46) as set forth in figure 1.

With reference to claim 12, Keuhn discloses both the anchor end and the user end comprising a generally rectangular shape as set forth in figure 1.

With respect to claims 14, 16, 29, 31, 49 and 51 Keuhn discloses an absorbent article wherein the fastener has the claimed length and width as set forth in col. 5, lines 39 – 44.

With reference to claims 17 – 18, 45 – 46, 58, 64 and 65, Keuhn discloses an absorbent article wherein at least one end (the anchor end) of the fastener is bonded to the article generally at the first waist region as set forth in col. 9, lines 59 – 63 and in figure 6.

The applicant is reminded that:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was

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made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)

Regarding claims 20 – 22, Keuhn discloses an absorbent article wherein the outer cover provides an active landing material and comprises at least one attachment panel in the form of loop material as set forth in figure 1.

With reference to claims 24 and 42, Keuhn discloses an absorbent article wherein the pair of ears comprises elastomeric material as set forth in col. 14, lines 21 – 56. The ears are an integral part of the inside liner sheet and backsheet (figure 1) which may be formed of an elastic material.

With respect to claim 27, Keuhn discloses an absorbent article wherein the anchor end of the fastener is reinforced with glue as set forth in col. 9, lines 45 – 65.

As to claim 39, Keuhn discloses the active fastening surface of the flexible material to be substantially covered by active fastening material as set forth in as set forth in figure 1.

As to claim 41, Keuhn discloses an absorbent article wherein the outer cover comprises a pair of ears as set forth in figure 1.

With reference to claim 52, Keuhn discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second

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waist region (figure 1) and at least one fastener comprising a single piece of flexible material (40) having an active fastening surface (48) extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for anchoring to said article generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to the article generally at the second waist region to secure the article on a wearer, adapted for anchoring to said article generally at said first waist region and for fastening to said article generally at said second waist region to secure said article on a wearer, the active fastening surface being substantially covered by an active fastening material as set forth in figure 2.

As to claim 53, Keuhn discloses an absorbent article wherein the article has an inner surface and an outer surface with the fastener being adapted for anchoring to the outer surface of the article generally at the first waist region and for fastening to the outer surface at the second waist region to secure the article on the wearer as set forth in figure 1.

Regarding claim 54, Keuhn discloses an article further comprising a liner (25) defining the inner surface of the article, an outer cover (24) in opposed relationship with the liner and defining the outer surface of the article, and an absorbent core (26) between the liner and the outer cover as set forth in col. 4, lines 5 – 9.

With reference to claim 55, Keuhn discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region

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extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 1), an outer cover (24), a pair of ears generally at the first waist region (figures 1 and 7) and at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the fastening surface being located on the fastener for anchoring to said article generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article generally at said second waist region to secure said article on a wearer, the active fastening surface being substantially covered by an active fastening material as set forth in figures 1 and 7.

As to claim 56, Keuhn discloses an absorbent article wherein the ears are formed integrally with the outer cover at the first waist region of the article as set forth in figures 1 and 7.

As to claim 61, Keuhn discloses a disposable absorbent article wherein the active fastening material is one the at least one fastener comprising a plurality of hooks (73,75), said hooks being fastenably engageable with the article at the first waist region as set forth in figure 7.

With reference to claim 62, Keuhn discloses a disposable absorbent article having a longitudinal direction and a lateral direction, said article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article

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being foldable generally within the crotch region to configure the article with the first waist region in generally opposed relationship with the second waist region (figure 1) and at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for fastening to the article generally at the first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to the article generally at the second waist region to secure the article of a wearer (figure 1), the active fastening surface comprising an active fastening material (48), said fastening material being releasably engageable with the article as set forth in the abstract.

With reference to claim 63, Keuhn discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 1) and at least one fastener comprising a single piece of flexible material comprising an active fastening material, a first portion of the active fastening material being located on the fastener for fastening engagement with the article generally at the first waist regions and a second portion of the active fastening material being located on the fastener for fastening engagement with the article generally at the second waist region to secure the article on a wearer, (figure 1) said fastener being affixed to the article generally at said first



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portion of the active fastening material other than by said active fastening material (42) as set forth in figure 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 15, 19, 25, 28, 30, 43, 47 – 48 and 50 rejected under 35 U.S.C. 103(a) as being unpatentable over Keuhn, Jr. et al. (US 5,374,262).

The difference between Keuhn and claim 13 is the provision that the anchor end of the fastener has a shear strength of greater than 3,000 grams tensile.

Keuhn discloses a shear force of at least about 1000 grams as set forth in col. 8, lines 29 – 32.

It would have been obvious to one of ordinary skill in the art to modify the shear strength of Keuhn since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering to optimum or workable ranges involves only routine skill in the art.

With reference to claims 15, 28, 30, 48 and 50, see the rejection of claim 13.

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The difference between Keuhn and claim 19 is the provision that the adhesive bead is less than about .25 inches in width.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

The difference between Keuhn and claim 25 is the provision that the elastomeric material is a neck-bonded laminate.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

As to claim 43, see the rejection of claim 25.

Regarding claim 47, see the rejection of claim 19.

### ***Response to Arguments***

Applicant's arguments with respect to claims 2 – 5, 7 – 22, 24 – 33, 35, 37 – 56, 58 and 61 – 65 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The

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fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Examiner  
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